IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 8242 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAVJIBHAI PUNJABHAI CHAVDA - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR HARSHIT S TOLIA for Applicant(s) : 1,
MR KT DAVE, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
None for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 14/09/2007

ORAL JUDGMENT

1. Present application has been filed by the applicant – original accused No.5 under section 482 of the Criminal Procedure Code for an appropriate order to quash and set aside the FIR

being M Case No. 64 of 2003 registered with Anand Town Police Station for the offence punishable under sections 406, 420 and 114 of the Indian Penal Code.

2. The Manager of Anand Urban Co-operative Bank Ltd – Shri Bharatkumar Ambalal Panchal filed a complaint under section 190 of the Criminal Procedure Code in the Court of learned JMFC, Anand against the applicants and others for the offence under sections 406, 420 and 114 of the Indian Penal Code alleging inter alia that the original accused Nos. 1 to 3 who were carrying the business in the name of K.D. Enterprises applied for the hypothecation loan of Rs.10,00,000/- on the furniture hardware and the bank sanctioned loan of Rs.10,00,000/- and the original accused Nos. 4 and 5 stood as guarantors and against the hypothecation loan, all the accused persons have executed hypothecation agreement against the stock and as per the loan agreement and the conditions hypothecated goods could not be sold by the

accused persons without the permission of the bank and as an amount of Rs. 12,72,447/- was due and payable with interest, the accused persons served with the notice to pay the loan amount, however, on inquiry, it was found that the accused persons are not available at their business place and even the hypothecated goods are also sold and/or not available and that the accused have sold the hypothecated goods with a view to dupe the bank. It is also further alleged that the accused persons have obtained the loan on false representation and on bogus names. That the learned JMFC, Anand passed an order for inquiry under section 156(3) of the Criminal Procedure Code and sent the complaint to the P.I., Anand Town Police Station for further investigation and the complaint / FIR was registered as M Case No. 64 of 2003 on 25.10.2003. That thereafter, after investigation the charge-sheet has been filed against the applicant – original accused and others for the offence under sections 406, 420 and 114 of the Indian Penal Code in the month of December –

2003 and thereafter, the applicant preferred Criminal Misc. Application No.14872 of 2006 for quashing and setting aside the impugned FIR / complaint which came to be withdrawn by the applicant on 2.7.2007 with a liberty to file afresh along with the charge-sheet papers and thereafter, the applicant has preferred present application under section 482 of the Criminal Procedure Code to quash and set aside the impugned FIR being M Case No.64 of 2003 lodged with the Anand Town Police Station as well as the charge-sheet and all other proceedings in pursuance thereto against the applicant – original accused No.5.

3. Shri H.S.Tolia, learned advocate appearing for the applicant – original accused No.5 has vehemently submitted that there are no allegations against the applicant for making out a case for the offence under sections 406, 420 and 114 of the Indian Penal Code. It is also further submitted by him that there are only general allegations. It is submitted that at the

time of taking the loan, there was no intention to cheat and therefore, it cannot be said that the applicant has committed any offence under sections 406, 420 and 114 of the Indian Penal Code. It is submitted that merely because the applicant has accepted the liability to repay the loan, however, from no stretch of imagination, the said liability can be extended in respect of any criminal offence. It is also further submitted that the entire dispute is of civil nature and the bank has converted the same in criminal with malafide intention. It is submitted that bank can always initiate recovery proceedings against the applicant also, however, the applicant can never be held vicariously liable for any criminal offence. Shri Tolia, learned advocate for the applicant has relied upon the unreported decision of the learned Single Judge of this Court rendered on 14.2.2007 in Criminal Misc. Application No.9249 of 2004 in case of ***Shri Shailesh I. Patwari & Another V/s. State of Gujarat & Another*** and relying upon the said decision, he has requested to quash the

impugned complaint / FIR being M Case No. 64 of 2003.

4. Application is opposed by Shri K.T.Dave, learned APP appearing for the State. It is submitted that there are sufficient allegations against the applicant also. It is submitted that not only that but after the inquiry under section 156(3) of the Criminal Procedure Code, a charge-sheet is already filed against the applicant also for the offence under sections 406, 420 and 114 of the Indian Penal Code. Thus, there is a prima facie case made out against the applicant. It is also further submitted that the charge-sheet has been filed in December – 2003 and the present application has been filed in the year 2006-07. It is also further submitted by him that so far as the decision of the learned Single Judge relied upon by the applicant in case of ***Shri Shailesh I. Patwari & Another*** (supra) is concerned, the same is challenged before the Hon'ble Supreme Court and the Hon'ble Supreme Court issued notices in the SLP against

the said decision and therefore, it is submitted to dismiss the present application by submitting that as held by the Hon'ble Supreme Court in catena of decisions, even if, there might be a civil dispute but a criminal complaint can also be filed for the very transaction in question. It is submitted that looking to the facts and circumstances of the present case, more particularly, when the hypothecated goods have been sold behind the back of the bank and the accused persons thereby defrauded the bank, it is requested not to exercise the powers under section 482 of the Criminal Procedure Code. He has also relied upon the decision of the Hon'ble Supreme Court in case of ***State of Orissa & Another V/s. Saroj Kumar Sahoo*** reported in **(2005) 13 SCC 540** by further submitting that as held by the Hon'ble Supreme Court at the time of framing of the charge what is required to be considered by the learned Magistrate is whether there is a prima facie case against the accused for further trial or not and at this stage, it is not open for the learned Magistrate to

appreciate the evidence and to consider whether on the basis of said evidences accused is likely to be convicted or not. Under the circumstances, it is requested to dismiss the present application.

5. Heard the learned advocates appearing for the respective parties.

6. At the outset, it is required to be noted that the original accused Nos.1 to 3 have taken a hypothecation loan on the hypothecated goods which could not have been sold by the accused persons without prior permission of the bank and inspite of that the accused persons have sold the goods behind the back of the bank and have duped the bank and an amount of Rs. 12,72,447/- was due and payable in the year 2003. It is also required to be noted that the applicant stood as guarantor and even as stated by the applicant it will be his liability to make the payment due and payable to the bank also. It is also required to be noted that this Court also asked

the learned advocate for the applicant whether considering above submissions, the applicant is ready and willing to deposit the said amount or not. But after getting necessary instructions from the applicant, Shri Tolia, learned advocate appearing for the applicant has submitted that the applicant is not agreeable to pay / deposit any amount with the bank. This shows the conduct on the part of the applicant. Even otherwise, after investigation / inquiry under section 156(3) of the Criminal Procedure Code, a charge-sheet is already filed against the applicant and others for the offence under sections 406, 420 and 114 of the Indian Penal Code. Thus, there is prima facie case found against the applicant also for the aforesaid offence. As held by the Hon'ble Supreme Court in case of ***State of Orissa & Another*** (supra) at the time of framing of the charge what is required to be considered by the learned Magistrate is whether there is prima facie case and/or material against the accused for further trial or not and at this stage, it is not open for the learned Magistrate

to appreciate the evidence and to consider whether on the basis of the evidence available the accused is likely to be convicted or not.

Now, so far as the decision of the learned Single Judge reliance upon which has been placed by the applicant in case of ***Shri Shailesh I. Patwari & Another*** (supra) is concerned, it is reported that the said decision has been challenged before the Hon'ble Supreme Court and the Hon'ble Supreme Court has issued the notice in the SLP. Even otherwise, on considering the decision of the learned Single Judge, there is no absolute proposition of law laid down by the learned Single Judge as sought to be canvassed on behalf of the applicant that whenever there is a civil dispute, criminal complaint is not maintainable. Considering the averments in the complaint and the fact that the charge-sheet is already filed against the applicant for the offence under sections 406, 420 and 114 of the Indian Penal Code, this Court is also of the firm opinion that there is sufficient material

against the applicant for further trial and it cannot be said that the complaint filed against the applicant is so vexations which requires to be quashed and set aside in exercise of the powers under section 482 of the Criminal Procedure Code.

7. Under the circumstances and for the reasons stated above, present application deserves dismissal and is accordingly dismissed.

[M.R.Shah, J.]

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